

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4367 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- No. 1 Yes Nos. 2 to 5 No

TTK PHARMA LTD.

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR THAKORE SR. Advocate with DARSHAN M PARIKH
for Petitioner
MR. U.A. TRIVEDI, ASST. GOVERNMENT PLEADER for
Respondent No. 1 & 2
MR AS VAKIL for Respondent No. 3
Respondent No. 4 served.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/09/97

ORAL JUDGEMENT

The petitioner seeks to challenge the decision of the respondents to award rate contract pursuant to the tender notice with respect to item No. 232.20 being Anti Coagulant Citrate Phosphate Dextrose Adenine Solution 49ml (C.P.D.A. Solution U.S.P.) to the respondents Nos.

3 and 4 in the ratio of 70% : 30% and for commanding the respondents to consider the case of the petitioner who had offered lowest rate and award the rate contract to the petitioner.

According to the petitioner, the tender of the petitioner was tentatively accepted since it was lowest, but, later on that decision was changed by the Committee and thus respondents Nos. 3 and 4 have been given the rate contract arbitrarily and with a view to favour them. It was contended on behalf of the petitioner that there was no genuine opinion before the respondent authority for coming to the conclusion that the product of the petitioner was not upto the mark. It was also contended that the Committee could not have taken any opinion of Doctors or hospitals and the only opinion relevant in the context was the laboratory opinion which was not obtained. It was also contended that the respondents could not have required the IP standards when the tender prescribed USP standards. It was finally contended that the affidavits which have been filed on behalf of the respondents are vague and not supported by any cogent material.

The respondent No. 2, Director, Central Medical Stores Organisation, invited the tenders for various items mentioned in tender form-'A' at Annexure-A to the petition, pursuant to which the petitioner submitted the tender in respect of item No. 232.20 which is Blood Bag System with disposable donor tube having formula mentioned therein. According to the petitioner as per the decision taken by CMSO Committee which met on 6.5.1997, it was decided to give the rate contract to the petitioner but for unknown reasons that decision came to be reversed and it was decided to call for the opinion of the Government Blood Banks and hospitals.

As per condition No. 42 of the general terms and conditions of Tenders, the Director had reserved his right to accept the drugs in form other than the specified form nearest to the specification and in the packing other than specified. It was also provided that the Director reserved his right to accept the medical preparation with interchangeability of standards, namely, B.P. instead of I.P., U.S.P. and vice versa. Thus, under the terms and conditions of the tender itself the Director had reserved his right to accept B.P. instead of I.P. or U.S.P. and vice versa.

According to the respondents in view of the meeting held on 6.5.1997 the Purchase Committee had

decided to allow 70% quota of the product of the petitioner and 30% quota was to be taken from second lowest M/s Core Health Care Limited and substituted rate contract was decided for the third acceptable offer of M/s. Peninsula Polymers Ltd. It is stated in their affidavit-in-reply that the decision was however not finalised, as the meeting was not concluded on that day. Later on it came to the notice of the respondent No. 2 Director that the product of the petitioner was lacking in quality and complaints against it were received in the past also. Therefore, in the further meeting of the Purchase Committee it was decided to check the quality of the product through an expert Dr. Saxena who was Director, AIDS Cell. The minutes were accordingly prepared for the meeting of 6.5.1997 and 17.5.1997, on 20.5.1997. The opinion was received from Dr. Saxena on 23.5.1997 which was duly considered by the Stores Purchase Committee. According to the respondents it was observed from that report that most of the blood banks who had used the product of the petitioner had reported that it was unsatisfactory. Irwin Group of Hospitals, Jamnagar which was the only Government Hospital in which it was said to have been used also reported that the said product was not satisfactory. Taking into account these opinions, the Committee which consisted of nine high Officers finally decided not to accept the petitioner's tender on the ground that it was not of a proper quality even though its rate was lowest. These blood bags are to be used for collecting human blood for transfusion to patients and in such matters a decision arrived at by an Expert Committee cannot be lightly interfered with.

It was contended that the petitioner had never supplied any bags to the Government hospital at Jamnagar and there was no question of any adverse report in respect of petitioner's blood bags coming from Jamnagar. The respondents have now filed an affidavit of the Head of the Department of Pathology of M.P. Shah Medical College, Jamnagar who has, in terms, stated that he distinctly remembers that the petitioner's blood bags were received by his hospital from the Stores Department and he had complained in respect of their quality. There is no reason for Dr Joshi to make false assertions in this regard. He was Head of the Department and being in charge of the Pathology Department, he had an occasion to use the blood bags of the petitioner. In fact the petitioner was connected with the blood bags manufactured by Penpol and later on in December 1995 it started manufacturing its own blood bags. It is not necessary for this court to embark upon an inquiry as to from where the Medical Stores at Jamnagar had acquired the blood

bags of the petitioner. It is not as if only Jamnagar Government Hospital had reported that the blood bags of the petitioner were unsatisfactory. Even from other quarters i.e Blood Banks and hospitals the reports which have been gathered by Dr Saxena were adverse to the petitioner's product. Dr Saxena's report which is mentioned in the affidavit was shown from the original file to the court and it does contain various communication to Dr Saxena from blood bags intimating to him that the product of the petitioner was not upto the mark.

The Committee therefore has acted after considering the case from the relevant aspects and if on considering the relevant reports including that of Dr Saxena the Committee has finally decided not to accept the petitioner's tenders, though it was lowest, on the ground that the quality of the petitioner's goods was not upto the mark and has awarded rate contract to the respondent Nos. 3 and 4, it can never be said that the decision is arbitrary or illegal in any manner. As noted above, the Director had retained his option regarding standards under Clause 42 of the Terms and Conditions of the tender and therefore it is not open to the petitioner to contend that only U.S.P. standards could have been insisted upon in respect of any of the components.

Under the above circumstances there is no valid ground made out by the petitioner for interfering with the rate contract granted to the respondents Nos. 3 and 4 and the petition is rejected. Notice is discharged with no order as to costs. Interim relief stands vacated.

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